IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

Review Petition No.10 of 2007
In
Second Appeal No.998 of 2006

Sou.Meena Subhash Mahamuni
@ Meena Narayan Sutar. .. Petitioner
(Org.Petitioner)

Vs.

Indapur Municipal Council,
Indapur, & Ors. .. Respondents
(Org.Defendants)

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Shri V.Y.Jadhav for the Petitioner/Applicant.

Shri Rahul Kate for the Respondents.

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CORAM : R.M.S.KHANDEPARKAR, J

DATED : 11TH OCTOBER, 2007

P.C.

1. Heard. The contention on behalf of the appellant is that while rejecting the Second Appeal by an order dated 11th December, 2006, though the point relating to the scope of Section 58 of the Evidence Act was considered, this Court overlooked the fact that the admission regarding possession of the premises with the appellant/applicant which was

claimed in the appeal was in relation to the testimony of the person who is agent for the respondents/original defendants and in that view of the matter, the statement by the agent being binding upon the Principal was totally overlooked while rejecting the contention based on the proposition of law as is incorporated under Section 58 of the Evidence Act.

2. Paragraph 4 of the order dated 11th December, 2006 reads thus:-

> "The contention regarding failure on the part of the lower Appellate Court to consider the provisions of Section 58 and in particular about alleged admission of the witnesses about possession of the premises with the appellant is totally devoid of substance. Section 58 does not apply to the testimonies of the witnesses, it applies to the admissions made by the parties to the proceedings. The witnesses are neither parties to the suit nor are the agents of the parties to the suit. Being so, the contention sought to be raised based on Section 58 of the Evidence Act is totally devoid of substance."

3. Undoubtedly, the contention of the appellant was rejected solely on the ground that the statement regarding possession of the premises with the applicant was by the witness. However, as rightly submitted by the learned advocate for the applicant, the fact that the witness was none else than the representative of the council and in that context whether the statement of the representative of the council is binding or not, and to that extent the said provision of the Evidence Act is attracted, was not at all considered though was sought to be canvassed by the applicant. This is an error apparent on the face of record which justifies recall of the order dated 11th December, 2006 and re-hearing of the Second Appeal No.998 of 2006 at the stage of admission. Hence, the order dated 11th December, 2006 is hereby recalled. The Second Appeal No.998 of 2006 is hereby restored to the file and directed to be placed on board for hearing before the regular bench. The Review Petition accordingly stands disposed of with no order as to costs.

(R.M.S.KHANDEPARKAR, J)